MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2015/2016

UEQ3612 – EQUITY & TRUSTS I

(All sections / Groups)

05 October 2015
Reading time : 9.00 a.m – 9.15 a.m
(15 minutes)
Answering time: 9.15 a.m – 12.15 noon
(3 hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the exam hall **CLEAN** and **ORIGINAL** copies of the **Wills Act 1949** and the **Specific Relief Act 1950** (Act 137).

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

Jibam, a trustee for the See Yew Soon estate, decided to use some of the trust money to build a private business for himself because he honestly believed that the slowdown in the property market in Malaysia meant that if he bought some property now, he would make a large profit in a few years and be able to pay back the trust.

So he went to Ramlee, his good friend a banker, and told him that he needed the money to sort out his personal problems which Ramlee knew about and sympathized with. Jibam invested the money and lost heavily.

Recently, Too Kar Soon and Too Soon Soon, both beneficiaries under the trust, realised the misconduct of the trustee and wanted to sue Jibam and Ramlee to make good the loss.

Advise the beneficiaries.

(Total: 25 marks)

QUESTION 2

By her will, Jenny leaves all of her jewellery to her sister Mandy and RM20,000 to her sister Nicole. The will also states that Jenny leaves "RM17,000 to my cousin Kate on trust for such persons as I will communicate to her".

One month before the execution of the will, Jenny handed Mandy a sealed envelope with instruction that it was not to be opened until Jenny's death. Jenny did not say anything else. Unknown to Mandy, the letter states that the jewellery given to her and the money given to Nicole must be held on trust for Tom, Jenny's secret boyfriend.

On the same day as she gave Mandy the envelope, Jenny called Kate and informed her that the property she will receive under the will should be held by her on trust for Brad, Jenny's other secret boyfriend. Kate agreed to this.

Discuss and determine the type of trusts involved, the elements as well as their validity. Cite the relevant cases where appropriate.

(Total: 25 marks)

Continued...

QUESTION 3

Answer both parts of the question:

a) In March of this year, Danno the owner of 6,000 shares in High Bhd, executed a transfer of the shares in favour of his friends, Chin and Steve, and he also executed a Settlement appointing Chin and Steve to be trustees and directing the trustees to hold the shares on trust for the benefit of his niece Kanno, for life with remainder to her children. The share transfer was never delivered to Chin and Steve or to High Bhd and Danno retained the share certificate showing himself as the registered owner of the shares. Danno has recently died and under his will made last year he appointed Chin and Steve to be his executors and left his residuary estate (which included the 6,000 shares) to his nephew, Jerry.

Advise Chin and Steve how they should deal with the 6,000 shares.

(15 marks)

(b) Discuss the differences between completely and incompletely constituted trusts and indicate the importance (if any) of the differences between them.

(10 marks)

(Total: 25 marks)

QUESTION 4

Answer both parts of the question:

(a) Explain **FOUR (4)** of the following maxims of equity, and give the example of situations relevant to it.

i) Where there is equal equity the law shall prevail.
ii) He who comes to equity must come with clean hands.
iii) Equity will not suffer a wrong to be without a remedy.
iv) Equity imputes an intention to fulfil an obligation.
v) He who seeks equity must do equity,
vi) Equity acts in personam.

(16 marks)

(b) Discuss the three certainties required in a creation of a valid and enforceable trust. Support your answer with relevant cases.

(9 marks)
(Total: 25 marks)
Continued...

QUESTION 5

Answer either (a) **OR** (b)

(a) The idea of a resulting trust is that property returns or 'result back' to the original or rightful owner or settlor.

Richard Clements & Ademola Abass, *Equity and Trusts: Text, Cases, and Materials*, Oxford University Press (2nd ed. 2011), 322.

Critically discuss the above statement with reference to relevant authorities on the types of resulting trust.

(Total: 25 marks)

OR

(b) "Equity is a body of law that addresses concerns that fall outside the jurisdiction of the Common Law. It does not intend to overrule the Common Law, but merely as a gloss or supplementary to the Common Law".

In the light of the above statement, broadly discuss the origin of the rules of equity, its historical background, purposes, development as well as its reception in Malaysia.

(Total: 25 marks)

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